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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,874	06/14/2006	Emilio Morini	2541-1049	6569
466	7590	01/21/2009	EXAMINER	
YOUNG & THOMPSON			WOOD, JONATHAN K	
209 Madison Street				
Suite 500			ART UNIT	PAPER NUMBER
ALEXANDRIA, VA 22314			4137	
			MAIL DATE	DELIVERY MODE
			01/21/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/582,874	MORINI, EMILIO	
	<b>Examiner</b>	<b>Art Unit</b>	
	JONATHAN WOOD	4137	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 14 June 2006.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 10-17 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 10-17 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 14 June 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>6/14/2006</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

### ***Specification***

1. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

2. The spacing of the lines of the specification is such as to make reading difficult.

New application papers with lines 1½ or double spaced on good quality paper are required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 12, 15-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The invention recited in these claims has no support in the disclosure as originally filed on December 15, 2003, the effective U.S. filing date (See MPEP 1893.03(b)).

**In Reference to Claims 12 and 15-16**

Claim 12, lines 3-8 add elements found only in the embodiment of Figures 4-6 to the embodiment of Figures 1-3 as recited in claim 10. Particularly, the claim calls for a pressure fit cap when a threaded cap has previously been claimed in claim 10 and a reducer element which has an internally abutting ring (4c) when a reducer element with a superiorly abutting ring (4b) has previously been claimed in claim 10. Thus, claim 12 and its dependent claims are drawn to subject matter not present on the U.S. filing date.

**In Reference to Claim 17**

Lines 1-3 add elements found only in the embodiment of Figures 4-6 to the embodiment of Figures 1-3 as recited in claim 10. Particularly, the claim calls for a

pressure fit cap when a threaded cap has previously been claimed in claim 10. Thus, claim 17 is drawn to subject matter not present on the U.S. filing date.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 10-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Reference to Claims 10, 11, and 13-14

Claim 10, line 10 recites 'characterised in that it comprises a threaded mouth'. The term 'it' in this limitation is unclear in that it could be referring to the tube structure or the reducer element structure. For purposes of examination, examiner considers the term 'it' to refer to the tube structure. Appropriate correction is required.

Claim 10, line 7 recites 'in which the passage-hole is to be made' after previously claiming a passage-hole in line 4. As the claim reads, the upper part of the tube has a passage-hole in line 4 and then in line 7 the claim reads as if the passage-hole is not present. Appropriate correction is required.

In Reference to Claims 12 and 15-16

Claim 12 recites the use of a threaded cap on the tube as stated in claim 10 and then further recites the use of a pressure-fit cap in line 1. This combination is not disclosed in the application and examiner cannot reasonably determine what applicant is attempting to claim. Further, claim 12 recites a reducer element which abuts the opening of the tube both externally, as recited in claim 10, and internally, as recited in

line 6. This combination is not disclosed in the application and examiner cannot reasonably determine what applicant is attempting to claim. It would appear that applicant has erroneously claimed elements of the embodiment of Figures 4-6 onto the embodiment of Figures 1-3 rather than separating the two. Examiner is consequently unable to reasonably ascertain the meaning of the claim language in claim 12 and therefore cannot adequately examine the claim and its dependents for relative prior art. The absence of a rejection based on prior art should not be taken as an indication of allowability.

In Reference to Claim 17

Claim 17 recites the use of a threaded cap on the tube as stated in claim 10 and then further recites the use of a pressure-fit cap in line 1. This combination is not disclosed in the application and examiner cannot reasonably determine what applicant is attempting to claim. It would appear that applicant has erroneously claimed elements of the embodiment of Figures 4-6 onto the embodiment of Figures 1-3 rather than separating the two. Examiner is consequently unable to reasonably ascertain the meaning of the claim language in claim 17 and therefore cannot adequately examine the claim for relative prior art. The absence of a rejection based on prior art should not be taken as an indication of allowability.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 10, 11, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 4,927,058 to *Nimmey et al. (Nimmey)* in view of US PGPUB 2003/0015549 A1 to *Yoshida (Yoshida)*.

In Reference to Claim 10

*Nimmey* teaches:

An improved tube made of a plastic material, comprising a lower part (body portion 16) which is open for introduction of a product and closable after the introduction (col. 1, line 57 - col. 2, line 3), and an upper part (tapered shoulder 20) which exhibits a passage-hole (A, Figure 1 below as annotated by examiner) for exit of the product from the tube (col. 2, ll. 25-27), the upper part comprising an opening (B, Figure 1 below as annotated by examiner), which is larger than the passage-hole (Figure 1) and is arranged in a zone of the upper part in which the passage-hole is to be made (Figure 1); the tube comprising a reducer element (insert 28) in which the passage-hole is made, which reducer element is conformed and arranged in order to fit sealingly in the opening (col. 2, ll. 9-14); characterized in that it comprises a threaded mouth (neck 22) having a cylindrical shape and onto which a closure cap (cap 38) is screwed (col. 2, ll. 20-24), at which threaded mouth the opening is afforded (Figure 1), the reducer element comprising a disc (outwardly directed annular flange 33)

which rests superiorly on the threaded mouth when the reducer element is fitted into the opening (Figure 1).

*Nimmey* fails to disclose:

The reducer element having a film on an upper part of the disc in order to close the passage-hole.

*Yoshida* teaches:

A tube (collapsible dispensing tube 10) having a threaded mouth (spout 21) which is closed by a film member adhered to its tip (¶ 32, II. 6-9).

It would have been obvious to one having ordinary skill in the art at the time of the invention to have manufactured the tube of *Nimmey* with a film over its opening as taught by *Yoshida* in order to keep the tube sealed between manufacture and usage. Applying the teaching of *Yoshida* to the tube of *Nimmey* would necessitate the film being applied over the reducer element passage-hole which is inserted into the main opening of the tube.

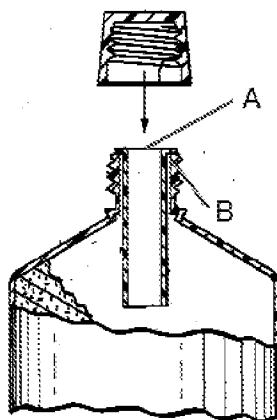


Figure 1, annotated by examiner

In Reference to Claim 11

*Nimmey* as modified by *Yoshida* teaches:

The tube of claim 10 (see rejection of claim 10 above), wherein: the opening has a circular section and is made on a perpendicular plane to an axis of the tube (*Nimmey*, Figure 1); the reducer element comprises an external ring (*Nimmey*, elongated tubular section 30) which fits into the opening (*Nimmey*, col. 2, ll. 15-17); the passage-hole is arranged concentrically to the external ring (*Nimmey*, Figure 1).

In Reference to Claim 13

*Nimmey* as modified by *Yoshida* meets this product-by-process limitation because the structure obtained by injection moulding is the same as the structure of *Nimmey*.

In Reference to Claim 14

*Nimmey* as modified by *Yoshida* meets this product-by-process limitation because the structure obtained by injection moulding is the same as the structure of *Nimmey*.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JONATHAN WOOD whose telephone number is (571)270-7422. The examiner can normally be reached on Monday through Friday, 7:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ken Bomberg can be reached on (571)272-4922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JKW/  
Examiner, Art Unit 4137

/Kenneth Bomberg/  
Supervisory Patent Examiner, Art Unit 4137